



International Covenant on
Civil and Political Rights

Distr.
GENERAL

CCPR/C/79/Add.46
7 April 1995

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE
Fifty-third session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Comments of the Human Rights Committee

ARGENTINA

1. The Committee considered the second periodic report of Argentina (CCPR/C/75/Add.1) at its 1389th to 1391st meetings, on 21 and 22 March 1995 (see CCPR/C/SR.1389-1391). At its 1411th meeting, on 5 April 1995, the Committee adopted the following comments:

A. Introduction

2. The Committee welcomes the second periodic report submitted by the State party and views with satisfaction the frank and constructive manner in which the dialogue with the Committee has been conducted. It welcomes in particular the comprehensive answers provided by the high-level delegation representing the State party. None the less, the Committee expresses its regret that the report does not adequately deal with the factors and difficulties encountered with regard to the actual implementation of the Covenant. The Committee notes that this shortcoming was compensated in part by the oral update of the report, as well as the oral replies provided to the list of issues and other questions raised by the Committee during the consideration of the State party's report.

B. Factors and difficulties affecting the implementation
of the Covenant

3. The Committee notes that the compromises made by the State party with respect to its recent authoritarian past, especially the Law of Due Obedience and Law of Punto Final and the presidential pardon of top military personnel, are inconsistent with the requirements of the Covenant.



C. Positive aspects

4. The Committee notes with satisfaction Argentina's continuous progress in its efforts to democratize and to match its level of human rights protection with international standards. Although much work remains to be done in this area, legislative developments since 1983 indicate that Argentina is committed to the protection of human rights at the highest levels. In this connection, the Committee welcomes the constitutional reforms of August 1994, which elevate several international human rights instruments, including the Covenant and the First Optional Protocol, above national laws and grants them constitutional status (articles 31 and 75 (22) of the Constitution). The Committee further welcomes the creation of the post of "Defender of the People", which was established in December 1993 under Act 24.284. This post is responsible for the protection of the rights of the Argentine people against possible infringement by the national authorities.

5. The Committee welcomes the programmes established for the advancement of women's equality and particularly welcomes the recognition on the part of the State party of violence against women as a matter of concern.

6. The Committee welcomes the enactment of Act 24.043 granting compensation to those who were detained by order of the Executive. It also welcomes Act 24.411 which grants some benefits to relatives of disappeared persons.

7. The Committee welcomes the revisions made to the Code of Criminal Procedure, those which are under way to the Code of Civil Procedure, the reform of the prison system and the establishment of the Office of the Government Procurator for the Prison System. It also welcomes the efforts by the State party to rehabilitate convicted prisoners and construct more facilities to alleviate prison crowding.

8. The Committee notes with satisfaction the elimination in the constitutional reforms of 1994 of the qualification that the President of the Republic must be Catholic.

9. The Committee also notes with satisfaction that the Ministries of the Interior and Foreign Affairs are conducting human rights training programmes for law enforcement officials, personnel engaged in the administration of justice, and the general public.

D. Principal subjects of concern

10. The Committee reiterates its concern that Act 23.521 (Law of Due Obedience) and Act 23.492 (Law of Punto Final) deny effective remedy to victims of human rights violations during the period of authoritarian rule, in violation of articles 2, paragraphs 2 and 3, and 9, paragraph 5, of the Covenant. The Committee is concerned that amnesties and pardons have impeded investigations into allegations of crimes committed by the armed forces and agents of national security services and have been applied even in cases where there exists significant evidence of such gross human rights violations as unlawful disappearances and detention of persons, including children. The Committee

expresses concern that pardons and general amnesties may promote an atmosphere of impunity for perpetrators of human rights violations belonging to the security forces. The Committee voices its position that respect for human rights may be weakened by impunity for perpetrators of human rights violations.

11. In the latter connection, the Committee regrets that evidence presented to the Senate against members of the armed forces, proving that they have engaged in extrajudicial executions, forced disappearances, torture, or other violations of human rights, may in some cases prevent the promotion of those accused but does not in itself cause their dismissal.

12. The Committee is concerned with threats to members of the judiciary, which through intimidation seek to compromise the independence of the judiciary as set forth in article 14 of the Covenant. The Committee is further concerned about attacks against journalists and unionists, and the lack of protection afforded to them, which restricts the enjoyment of the rights of expression and association provided for in articles 19 and 22 of the Covenant.

13. While the Committee welcomes Act 24.043 and Act 24.411, it regrets that they do not provide for compensation for victims of torture. The Committee expresses concern about current cases of excessive use of force, torture and arbitrary or unlawful detentions committed by members of the police and the armed forces which have been brought to its attention. It is concerned that there is no clear mechanism for investigating complaints of police violence that ensures there will be no reprisals against complainants, that where provincial administrations are lax in dealing with allegations of police violence the federal authorities do not ensure compliance with the Covenant, and that the perpetrators of acts of police violence generally are not punished and the victims are not compensated. It expresses concern over the delay in resolving the situation of children of disappeared persons and is especially disturbed at the failure of the report to provide any information at all on the real situation as it relates to article 7 of the Covenant.

14. The Committee is concerned that the Penal Code appears to be deficient in certain key areas that apparently conflict with the principle of presumption of innocence (article 14, paragraph 2, of the Covenant). It is concerned about the system of pre-trial detention, which it considers to be one of the remaining vestiges of authoritarian rule. The Committee also expresses concern that persons may be detained for a period longer than the maximum penalty allowed by law and regrets, in this connection, that article 317 of the Constitution does not order their release. The Committee further notes that bail is established according to the economic consequences of the crime committed and not by reference to the probability that the defendant will not appear in court or otherwise impede due process of law. Nor is it compatible with the presumption of innocence that the length of pre-trial detention is not a product of the complexity of the case but is set by reference to the possible length of sentence. The Committee is also concerned that accused persons are held in detention in the same facilities as convicted persons. It expresses concern that the grounds for judicial authorization of telephone tapping may be too broadly drawn.

E. Suggestions and recommendations

15. The Committee recommends that the State party, in accordance with article 2, paragraph 2, of the Covenant, develop mechanisms for compensating all remaining victims of past violations of human rights by amending Act 24.043 or enacting appropriate legislation for the victims of such crimes. The Committee especially recommends that appropriate care be taken in the use of pardons and general amnesties so as not to foster an atmosphere of impunity (see the Committee's general comment No. 7 (16)). The Committee recommends that appropriate procedures be established to ensure that members of the armed forces or security forces against whom sufficient evidence of involvement in past gross human rights violations exists will be removed from their posts.

16. The Committee urges the State party to continue to investigate the whereabouts of disappeared persons, to complete urgently investigations into the allegations of illegal adoption of children of disappeared persons, and to take appropriate action. It also urges the State party fully to investigate recent revelations of murders and other crimes committed by the military during the period of military rule and to take action on the findings.

17. The Committee notes that the Office of the Under-Secretary-General of Human and Social Rights falls under the jurisdiction of the Ministry of the Interior, which also regulates the police forces. The Committee recommends that measures to guarantee the independence of the Under-Secretary-General be taken, particularly with respect to investigations of human rights violations.

18. The Committee urges that all necessary steps be taken to prevent cases of excessive use of force, torture, arbitrary detention or extrajudicial execution by members of the armed forces or the police. These steps should include preventive disciplinary and punitive measures, as well as appropriate training. All violations should be investigated and the victims compensated.

19. The Committee recommends that special protection be provided to journalists and members of trade unions under threat or intimidation so as effectively to ensure the rights provided for in articles 19 and 22 of the Covenant.

20. With respect to the Code of Criminal Procedure, the Committee recommends that the system of pre-trial detention be carefully reviewed. Legal safeguards should be established to ensure that, in instances where pre-trial detention exceeds the maximum applicable penalty for a crime, the defendant will be released without qualification. The Committee urges the State party to define clearly the purpose of pre-trial detention and to set the length of detention accordingly, applying the principle of presumption of innocence. It recommends the same consideration in the setting of bail.

21. The Committee recommends that the State party review and include information in its next report on the procedures established to ensure compliance with the views and recommendations adopted by the Committee under the First Optional Protocol, also bearing in mind its obligations under article 2 of the Covenant.

22. The Committee recommends that Argentina include, in its next periodic report, information on the measures adopted to follow up on the present comments

and give effect to its suggestions and recommendations. It further recommends that its comments be widely disseminated and incorporated into the curriculum of the human rights training programmes organized for law enforcement officials and administrators of justice.
